

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONNIE HORTON,	§	
	§	No. 520, 2011
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County.
	§	
DANIEL N. DELCOLLO and	§	C.A. No. 10C-02-066
BARBARA J. DELCOLLO,	§	
	§	
Plaintiffs Below-	§	
Appellees,	§	
	§	
and	§	
	§	
LEE R. HERBERT, SR.,	§	
	§	
Third-Party Defendant Below-	§	
Appellee.	§	

Submitted: February 3, 2012

Decided: February 23, 2012

Before **HOLLAND, BERGER, and RIDGELY**, Justices.

ORDER

This 23rd day of February 2012, it appears to the Court that:

(1) Defendant-Below/Appellant, Donnie Horton, appeals from a Superior Court judgment in favor of Plaintiffs-Below/Appellees, Daniel Delcollo and Barbara Delcollo, and Third-Party-Defendant-Below/Appellee Lee Herbert in this

debt action.¹ Horton raises two claims on appeal. First, Horton contends that the evidence was insufficient to show that Horton was obliged to Delcollo. Second, Horton contends that even if such obligation exists, Herbert is obliged to Horton for an equal amount. We find no merit to Horton's appeal and affirm.

(2) Horton and Delcollo were business associates. Delcollo is an electrical contractor and Horton owns an automobile service and repair business. Delcollo loaned Horton money several times prior to the present dispute. Those loans were not documented, but Horton repaid them with interest.

(3) Horton was approached for a loan by Herbert, another business associate, in March 2007. Horton testified that he declined to make the loan directly but approached Delcollo to suggest that Herbert borrow \$90,000 from Delcollo directly for a one-year term. Delcollo testified that Horton merely asked him to lend some money to an unnamed friend, and Delcollo declined because he did not lend money to people he did not know.

(4) Delcollo testified that, some time later, Horton asked him for a direct loan of \$90,000, but did not tell him what the loan was for. Horton offered to pay him \$100,000 back at the end of the year, and \$833 in monthly interest payments.

¹ Appellee Herbert has not filed an answering brief in this matter. This Court informed Herbert by letter dated January 19, 2012 that, if Herbert failed to file a brief within seven days, the Court would consider resolving the matter against him. Herbert did not respond.

Delcollo agreed. Barbara Delcollo delivered a check for \$90,000 to Horton, with the word “loan” signed in the memo line.

(5) On January 15, 2008, Delcollo received his first monthly interest payment of \$833. The check was from Clear Choice Media, co-signed by Horton, and stated “[i]nterest only, payment 1 of 12” in the memo line. Delcollo continued to receive monthly payments of \$833, though a third party Delcollo later learned to be Herbert often delivered them. One year later, Horton asked for an extension for repayment of the principal, stating that he would continue making the monthly payments. Delcollo agreed. Horton told him the loan would be repaid in full by November or December 2009. In April 2009, Delcollo wrote out an “IOU” for the \$90,000 loan, which Horton signed and which was later notarized. Horton testified that he signed only a blank piece of paper.

(6) Separately, Horton had approached Bruce Hubbard, a Delaware attorney, regarding a loan to Herbert. Horton testified that he took the proceeds of the Delcollo loan to Hubbard, and Hubbard prepared documents for a loan to Herbert. Discussions about the loan to Herbert began in March 2007, and the closing occurred in November 2007. The note provided that Herbert would repay \$100,000, plus monthly interest of \$833, to Horton and Delcollo as “Lender.” Herbert testified that Horton never informed him that the money was in fact coming from Delcollo; the only person he borrowed money from was Horton.

(7) Hubbard testified that Delcollo was not present at any meetings regarding the transaction with Herbert, nor did Hubbard discuss the transaction with Delcollo. Delcollo was added to the loan documents at Horton's direction, and with no input from Delcollo. Horton conceded at trial that he did not provide Hubbard with any information about Delcollo other than the fact that his name was going on the loan documents.

(8) In October 2009, Delcollo stopped receiving interest payments on the \$90,000 loan to Horton and was unable to reach Horton by phone. Two months later, Delcollo sent Horton a letter stating that he had not received the monthly interest payments and that the loan principal was overdue. Horton did not respond.

(9) Delcollo then filed a complaint against Horton alleging breach of contract. Horton filed a third-party complaint against Herbert. The matter proceeded to a two-day bench trial. The Superior Court entered a judgment of \$90,000 in favor of the Delcollos and against Horton, and a judgment of \$49,325.65 in favor of Horton and against Herbert, both with interest.

(10) As to the loan between Delcollo and Horton, the Superior Court stated:

It is clear from the evidence, and the Court finds credible evidence to support that on November of 2007, Mr. and Mrs. DelCollo loaned \$90,000 to Mr. Horton, evidenced by the check that was made payable to him. A check that he then took to the bank and cashed and obtained a cashier's check. The Court finds testimony of Mr. DelCollo regarding the

circumstances as to how this money was requested and how this money was transferred and for what purpose it was transferred to be credible and is supported by the evidence.

The Superior Court declined to enter prejudgment interest at the contractual amount on grounds that it was excessive and not negotiated at arm's length. This appeal followed.

(11) On an appeal from a Superior Court judgment after a bench trial, we review the Superior Court's findings "to ensure they are the result of a logical and orderly deductive reasoning process."² "This Court is free to make contradictory findings of fact only when the original findings are clearly wrong and justice requires their overturn."³ We review questions of law *de novo*.⁴

(12) Horton contends that the Superior Court's finding that Horton was a debtor was not supported by sufficient evidence. This claim lacks merit. The evidence supports that Horton and Delcollo reached an oral agreement for Delcollo to loan Horton \$90,000, with \$833 monthly interest and principal to be repaid in one year. Delcollo testified to this effect, and Horton accepted and endorsed a check for \$90,000 from Delcollo with the word "loan" written in the memo section. There was ample testimony and documentary evidence to support a finding of a debtor-creditor relationship between Horton and Delcollo.

² *Motorola Inc. v. Amkor Technology, Inc.* 958 A.2d 852, 861 (Del. 2008).

³ *Id.* (citing *Carello v. State*, 2004 WL 2520905 at *1 (Del. Nov. 1, 2004)).

⁴ *Id.*

(13) The fact that Horton acted as a lender to Herbert does not preclude a finding that he was a debtor as to Delcollo. There was no allegation that Horton assigned his duties under the loan to Herbert. The testimony of Hubbard, Herbert, and Delcollo was consistent with a finding that Delcollo had no knowledge of and did not participate in the loan to Herbert. The Superior Court acted within its discretion in crediting Delcollo's testimony that he loaned money only to Horton, over Horton's testimony that he was merely "facilitating" a loan between Delcollo and Herbert. On this record, the Superior Court's findings reflect a logical and orderly reasoning process as to the Delcollo-Horton agreement.

(14) The Superior Court also found that \$49,325.65 of the \$90,000 loan to Horton was brought to Hubbard, Horton's attorney, and used to pay off Herbert's mortgage with Wilmington Mortgage. The Superior Court further found, based on the settlement documents, that over \$40,000 was distributed to Horton. This finding was supported by a settlement statement, prepared by Horton's attorney, that listed two payoffs to Horton, of \$20,557.50 and \$19,500.00 respectively. The Superior Court's findings as to the loan between Horton and Herbert reflect an orderly reasoning process on this record. Accordingly, Horton's claim that the Superior Court erred by finding Herbert owed Horton only \$49,325.65 lacks merit.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice